

SECOND AFFIRMATIVE DEFENSE

3. The Complaint, and each and every purported cause of action contained therein, is barred, in whole or in part, by reason of the applicable statutes of limitation, including, but not limited to, the statute of limitations set forth in 17 U.S.C. Section 507 et. seq.

THIRD AFFIRMATIVE DEFENSE

4. This answering Defendant alleges that any and all events and damages, if any, referred to in plaintiff's Complaint were proximately caused or contributed to by the negligence and fault of plaintiff in that plaintiff did not exercise ordinary care in his own behalf at the time and places referred to in the Complaint. Therefore, plaintiff is completely barred from recovery herein. In the alternative, under the doctrine of pure comparative negligence and fault, said acts of plaintiff reduces it's right to recovery herein by the amount in which said acts contributed to their damages, if any.

FOURTH AFFIRMATIVE DEFENSE

5. This answering Defendant is informed and believes and based thereon alleges that any and all events and happenings in connection with the matters alleged in the Complaint, and the resulting injuries and damages, purportedly suffered by the plaintiff, if any, were proximately caused and contributed to by the independent, intervening, negligent and unlawful conduct of independent third parties and/or their agents, which therefore bars plaintiff from recovering the damages sought in the Complaint from this answering Defendant.

FIFTH AFFIRMATIVE DEFENSE

6. If it should be found that this answering Defendant is in any manner legally responsible for injuries or damages sustained by plaintiff, if any, which supposition is not admitted but merely stated for the purpose of this affirmative defense, it should be found that any injuries and/or damages determined to have been incurred or suffered by plaintiff in this action were proximately caused or contributed to by other defendants in this case, whether served or not served and/or proximately caused or contributed to by other persons or entities not parties to this action. Accordingly, this answering Defendant is entitled to a finding that the negligence and/or fault and/or unreasonable conduct or each of the aforesaid persons and/or entities, whether parties to this action or not, shall be determined, apportioned and prorated, and that any judgment which is rendered against this answering Defendant shall be reduced not only by the degree of comparative negligence of the plaintiffs, but also shall be reduced by the percentage of negligence and/or fault and/or unreasonable conduct attributed to the aforesaid other defendants an/or third person or entities, whether parties to this action or not.

SIXTH AFFIRMATIVE DEFENSE

7. Plaintiff failed to mitigate his alleged damages, if any.

SEVENTH AFFIRMATIVE DEFENSE

8. Plaintiff is not entitled to any relief under the doctrine of unclean hands.

EIGHT AFFIRMATIVE DEFENSE

9. Plaintiff cannot prove a violation of copyright under Feist Pub. V. Rural Tel. Serv. (1991) 499 U.S. 340.

NINTH AFFIRMATIVE DEFENSE

10. Plaintiff is entitled to de minimus damages, if any, under 17 U.S.C. Section 504(b) and 511(b).

TENTH AFFIRMATIVE DEFENSE

11. The actions of Defendant were exempt under 17 U.S.C. Section 100(5).

ELEVENTH AFFIRMATIVE DEFENSE

12. No Act or conduct of this answering Defendant caused any damage or injury to plaintiff.

TWELFTH AFFIRMATIVE DEFENSE

13. This answering Defendant at all times acted in a proper, lawful and legally permitted fashion without malice or oppression; they exercised and possessed that degree of skill, and therefore there is no basis upon which an award of general and/or special and/or exemplary damages against this answering Defendants can be supported.

THIRTEENTH AFFIRMATIVE DEFENSE

14. There was not meeting of the minds between Plaintiff and Defendant, in that, Defendant sent Plaintiff his standard Photographer Representative Agreement but Defendant completed altered the agreement. Defendant notified Plaintiff that he would not accept the agreement as altered by Plaintiff. There is no fully executed copy of the agreement executed between the parties. After Plaintiff was notified that his altered agreement was not

1 acceptable, Plaintiff began to send "batches of photographs" to
2 Defendant.

3 **FOURTEENTH AFFIRMATIVE DEFENSE**

4 15. No Act or conduct of this answering Defendant caused
5 any damage or injury to plaintiff.

6 **FIFTEENTH AFFIRMATIVE DEFENSE**

7 16. Plaintiff is not entitled to any relief based on
8 abandonment of copyright.

9 **SIXTEENTH AFFIRMATIVE DEFENSE**

10 17. Defendant has a statutory right of fair use of copyright
11 under 17 U.S.C. Section 107.

12 **SEVENTEENTH AFFIRMATIVE DEFENSE**

13 18. Plaintiffs action is barred under 17 U.S.C. Section
14 506(b) et. seq.


15 WHEREFORE this answering Defendant prays for judgment as
16 follows:

- 17 1. That plaintiff takes nothing by his Complaint
18 2. For cost of suit herein;
19 3. For reasonable attorney fees; and
20 4. For such other and further relief as the Court may deem
21 proper and just.

22 Dated: September 8, 2011

BAZAN HUERTA & ASSOCIATES

23
24 By:


25 John F. Bazan, Attorney
26 for Defendant, Jose L.
27 Marin
28

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and am not a party to the within action. My business address is BAZAN HUERTA & ASSOCIATES 5345 East Olympic Boulevard, Los Angeles, CA 90022.

On September 12, 2011, I served the following document described as:

ANSWER OF JOSE L. MARIN TO COMPLAINT

☒ By placing a true copy thereof enclosed in a sealed envelope(s) addressed as follows:

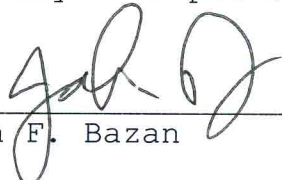
Carolyn E. Wright, Esq.
PO Box 430
Glenbrook, Nevada 89413

☒ In the ordinary course of business, I deposited the foregoing envelope(s) with the U.S. Postal Service on that same day with postage thereon fully prepaid at Whittier, California.

☐ the ordinary course of business, I faxed the above documents to

☐ I inserted the foregoing envelopes in appropriate packages for overnight delivery by U.S. Mail with postage thereon fully prepaid at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Proof of Service was executed this 12th day of September 2011, in Los Angeles, California.



John F. Bazan

Proof of Service